

CLAIMS RESOLUTION TRIBUNAL

In re Holocaust Victim Assets Litigation
Case No. CV96-4849

Certified Award

to Claimant Franz Kraus
also acting on behalf of Mary Kraus and Ann Hanson

in re Accounts of Rudolf Kraus and Ella Kraus

Claim Number: 500893/AX

Award Amount: 98,750.00 Swiss Francs

This Certified Award is based upon the claim of Franz Kraus (the "Claimant") to the published accounts of Rudolf Kraus. This Award is to the published accounts of Rudolf Kraus ("Account Owner Rudolf Kraus") and Ella Kraus ("Account Owner Ella Kraus") (together, "the Account Owners"), over which Hans Kraus, Franz Kraus, and Elise Robinson-Kraus (the "Power of Attorney Holders") held power of attorney, at the Zurich branch of the [REDACTED] (the "Bank").¹

All awards are published. Where a claimant has not requested confidentiality, as in this case, only the name of the bank has been redacted.

Information Provided by the Claimant

The Claimant submitted a Claim Form identifying the Account Owners as his parents, Rudolf Kraus, who was born on 28 September 1878 in Plana, Czechoslovakia (today, Czech Republic), and Ella Kraus, née Schlesinger, who was born on 4 January 1885 in Zagreb, Yugoslavia (today, Croatia). The Claimant stated that Rudolf Kraus and Ella Kraus were married in 1915 in Fiume, Italy, and had three children: Hans Kraus, Elisabeth (Elise) Kraus, and the Claimant. According to the Claimant, his father owned a shipping company called *Maritima*, which had offices in Vienna, Austria and Trieste, Italy. The Claimant indicated that his parents moved from Trieste to Zurich, Switzerland, and then to Vienna, where the company maintained its head office. The Claimant further indicated that his parents, who were Jewish, fled Austria to Italy after the incorporation of Austria into the Reich (the "*Anschluss*") in March 1938, and left Italy for the United States in September 1938. The Claimant explained that his family received their United States visas because they owned accounts in Swiss Francs ("SF") and Pound Sterling. According

¹ The CRT notes that on the February 2001 published list of accounts determined by the Independent Committee of Eminent Persons ("ICEP") to be probably those of Victims of Nazi Persecution (the "ICEP List"), Rudolf Kraus is indicated as having three accounts, and Ella Kraus is indicated as having two accounts. Upon careful review, the CRT has concluded that the Bank's records show that Rudolf Kraus and Ella Kraus jointly owned one account, and that Rudolf Kraus was a sole account owner of one account.

to the Claimant, his father was forced to abandon all his property when he fled Austria. The Claimant indicated that his father died on 20 September 1951 in Larchmont, New York, United States, and that his mother died on 20 March 1968 in New York, New York.

In support of his claim, the Claimant submitted his parents Czechoslovak passports, showing that their names were Rudolf Kraus and Ella Kraus, and containing their signatures; documents from the Vienna Police Department, stating that Rudolf Kraus and Ella Kraus did not have criminal records, and that they resided at Lainzerstrasse 43 in Vienna; his parents United States certificates of naturalization, documenting that their names were Rudolf Kraus and Ella Kraus and containing their signatures; Rudolf Kraus' death certificate, stating that his wife was Ella Kraus, née Schlesinger; the Claimant's birth certificate and marriage certificate, both stating that his parents were Rudolf Kraus and Ella Kraus; the death certificates of Hans Kraus and Elisabeth Kraus, stating that their parents were Rudolf Kraus and Ella Kraus; the will of Rudolf Kraus, stipulating that his wife, Ella Kraus, was the sole heir to his Estate provided she was alive at the time of his death; the will of Ella Kraus, stipulating that a trust was to be created for each of her three children equally, but that once her daughter Elisabeth Steinberg (née Kraus) died, the trusts would be terminated and the amount remaining in the trust would be distributed to her children, Franz Kraus and Hans Kraus, provided that they were alive and to Elisabeth Steinberg's children if she had children. If Hans Kraus or Franz Kraus were not alive, their shares would pass to their descendants *per stirpes*, and if Elisabeth Steinberg did not have any children, the amount remaining in her trust would pass to Ella Kraus' heirs *per stirpes*. The Claimant indicated that Elisabeth Steinberg had no children. The Claimant stated that he was born on 31 August 1916 in Zurich. The Claimant represents Mary Kraus and Ann Hanson, the children of his deceased brother, Hans Kraus.

Information Available in the Bank's Records

The Bank's records consist of a joint account opening contract, an instruction form, signed power of attorney forms, and printouts from the Bank's database. According to these records, the Account Owners were Rudolf Kraus and Ella Kraus who resided at Lainzerstrasse 43 in Vienna, Austria. The Bank's records indicate that the Account Owners jointly held one account, the type of which is not indicated. The Bank's records further indicate that the Power of Attorney Holders for these accounts were Dr. Hans Kraus, *Frau* (Mrs.) Elise Robinson-Kraus, and Franz Kraus, all of whom resided at the same address as the Account Owners. The Bank's records further indicate that the account was opened on 7 July 1934 and was closed on 24 January 1939.

The Bank's records also indicate that Account Owner Rudolf Kraus held another account, the type of which is not indicated, and that he granted power of attorney over this account to Account Owner Ella Kraus and Dr. Hans Kraus. The Bank's records indicate that this account was opened no later than 13 December 1937, and was closed on 2 October 1939.

The amounts in the accounts on the dates of their closures are unknown. There is no evidence in the Bank's records that the Account Owners, the Power of Attorney Holders or their heirs closed the accounts and received the proceeds themselves.

The CRT's Analysis

Identification of the Account Owners

The Claimant has plausibly identified the Account Owners. The Claimant's parent's names and city and country of residence match the published names and city and country of residence of the Account Owners. The Claimant's name matches the name of one of the Power of Attorney Holders. The Claimant's brother and sister's names match the names of the two remaining Power of Attorney Holders. The Claimant identified his parents' street address in Vienna, which further matches unpublished information about the Account Owners contained in the Bank's records.

In support of his claim, the Claimant submitted documents, including his parents' passports, showing that their names were Rudolf Kraus and Ella Kraus, and containing their signatures; documents from the Vienna Police Department, stating that Rudolf Kraus and Ella Kraus did not have criminal records, and that they resided at Lainzerstrasse 43 in Vienna; his parents' United States certificates of naturalization, stating that their names were Rudolf Kraus and Ella Kraus and containing their signatures, providing independent verification that the persons who are claimed to be the Account Owners had the same name and resided at the same address recorded in the Bank's records as the name and address of the Account Owners. Furthermore, the signatures of the Claimant's parents match the signatures of the Account Owners contained in the Bank's records.

The CRT notes that the other claims to these accounts were disconfirmed because those claimants provided a different country of residence or did not identify the joint account owner, the Power of Attorney Holders, or the street address of the Account Owners.

Status of the Account Owners as a Victim of Nazi Persecution

The Claimant has made a plausible showing that the Account Owners were Victims of Nazi Persecution. The Claimant stated that the Account Owners were Jewish, and that they fled Austria after the *Anschluss*.

The Claimant's Relationship to the Account Owners

The Claimant has plausibly demonstrated that he is related to the Account Owners by submitting specific information and documents, demonstrating that the Account Owners were the Claimant's parents. These documents include the Claimant's birth certificate and marriage certificate, both stating that his parents were Rudolf Kraus and Ella Kraus. There is no information to indicate that the Account Owners have surviving heirs other than the parties which the Claimant is representing.

The Issue of Who Received the Proceeds

The CRT notes that the Bank's records indicate that the accounts were closed on 24 January 1939 and 2 October 1939, at which time, according to information provided by the Claimant, the Account Owner was outside Nazi-dominated territory. However, given that the Bank's records do not indicate to whom the account was closed, that the Account Owners fled their country of origin due to Nazi persecution, that the Account Owners may have had relatives remaining in their country of origin and that they may therefore have yielded to Nazi pressure to turn over their accounts to ensure their safety, that the Account Owners and their heirs would not have been able to obtain information about their accounts after the Second World War from the Bank, even for the stated purpose of obtaining indemnification from the German authorities, due to the Swiss banks' practice of withholding or misstating account information in their responses to inquiries by account owners because of the banks' concern regarding double liability, and given the application of Presumptions (h) and (j), as provided in Article 28 of the Rules Governing the Claims Resolution Process, as amended (the "Rules") (see Appendix A), the CRT concludes that it is plausible that the account proceeds were not paid to the Account Owners, the Power of Attorney Holders, or their heirs. Based on its precedent and the Rules, the CRT applies presumptions to assist in the determination of whether or not Account Owners or their heirs received the proceeds of their accounts.

Basis for the Award

The CRT has determined that an Award may be made in favor of the Claimant. First, the claim is admissible in accordance with the criteria contained in Article 18 of the Rules. Second, the Claimant has plausibly demonstrated that the Account Owners were his parents and that relationship justifies an Award. Third, the CRT has determined that it is plausible that neither the Account Owners, nor the Power of Attorney Holders nor their heirs received the proceeds of the claimed accounts.

Amount of the Award

In this case, the Award is for two accounts of unknown type. Pursuant to Article 29 of the Rules, when the value of an account is unknown, as is the case here, the average value of the same or a similar type of account in 1945 is used to calculate the current value of the account being awarded. Based on the investigation carried out pursuant to the instructions of the Independent Committee of Eminent Persons ("ICEP" or the "ICEP Investigation"), in 1945 the average value of an account of unknown type was SF 3,950.00. Thus, the total 1945 average value of the accounts at issue is SF 7,900.00. The current value of this amount is calculated by multiplying it by a factor of 12.5, in accordance with Article 31(1) of the Rules, to produce a total award amount of SF 98,750.00.

Division of the Award

According to Article 23(2)(a) of the Rules, if a claimant has submitted the Account Owner's will or other inheritance documents pertaining to the Account Owner, the award will provide for distribution among any beneficiaries name in the will or other inheritance documents who have

submitted a claim. In the present case, the Claimant has submitted the wills for Account Owner Rudolf Kraus and Account Owner Ella Kraus. According to the will of Account Owner Rudolf Kraus, Account Owner Ella Kraus was the sole heir to his Estate provided she was alive at the time of his death. Account Owner Rudolf Kraus died on 20 September 1951 and Account Owner Ella Kraus died on 20 March 1968. Accordingly, Account Owner Rudolf Kraus' account and his portion of the joint account passed to Account Owner Ella Kraus.

According to the will of Account Owner Ella Kraus, a trust was to be created for each of her three children equally, but that once her daughter Elisabeth Steinberg died, the trust was to be terminated and the amount remaining in the trust would be distributed to her children, Franz Kraus and Hans Kraus, provided that they were alive and to Elisabeth Steinberg's children if she had children. If Hans Kraus or Franz Kraus were not alive, their shares would pass to their descendants *per stirpes*, and if Elisabeth Steinberg did not have any children, the amount remaining in her trust would pass to Account Owner Ella Kraus' heirs *per stirpes*. In this case, Elisabeth Steinberg and Hans Kraus are deceased, and Elisabeth Steinberg had no children. The Claimant represents the children of Hans Kraus, Mary Kraus and Ann Hanson. Accordingly, the Claimant, is entitled to one-half of the total award amount, and Mary Kraus and Ann Hanson are each entitled to one-quarter of the total award amount.

Scope of the Award

The Claimant should be aware that, pursuant to Article 20 of the Rules, the CRT will carry out further research on his claim to determine whether there are additional Swiss bank accounts to which he might be entitled, including research of the Total Accounts Database (consisting of records of 4.1 million Swiss bank accounts which existed between 1933 and 1945).

Certification of the Award

The CRT certifies this Award for approval by the Court and payment by the Special Masters.

Claims Resolution Tribunal
9 March 2005